

MONTANA LEGISLATIVE HISTORY

Chapter 354 19 99

Bill H _____ S 326

Original bill & history ✓ c

H. Committee on Judiciary

Hearing Date(s) 3/11 ✓ c

_____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Business + Industry

Hearing Date(s) 2/04 ✓ c

2-5 _____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

3/23 Signed by Governor
 3/24 Chapter Number Assigned
 Chapter Number 132
 Effective Date: 3/23/1999 - All Sections

SB 326 Introduced by Tester, et al.

LC0094 Drafter: MacMaster

Provide That, with Certain Exceptions, it Is a Criminal Offense to Intercept a Communication over Any Type of Telephone, Including but Not Limited to a Corded, Uncorded, Cellular, or Satellite Phone;...

1/29	Introduced and 1st Reading		
1/29	Referred to Business and Industry		
2/04	Hearing		
2/05	Committee Executive Action--Bill Passed	5	0
2/05	Committee Report--Bill Passed		
2/08	2nd Reading Passed	48	0
2/09	3rd Reading Passed	49	0
	Transmitted to House		
2/16	Referred to Judiciary		
3/11	Hearing		
3/22	Tabled in Committee		
3/23	Taken from Table in Committee		
3/23	Committee Executive Action--Bill Concurred as Amended	11	9
3/24	Committee Report--Bill Concurred as Amended		
3/27	2nd Reading Concurred	86	12
3/29	3rd Reading Concurred	87	11
	Returned to Senate with Amendments		
4/06	2nd Reading House Amendments Concurred	50	0
4/07	3rd Reading Passed as Amended by House	48	1
4/07	Sent to Enrolling		
4/08	Returned from Enrolling		
4/10	Signed by President		
4/12	Signed by Speaker		
4/12	Transmitted to Governor		
4/19	Signed by Governor		
4/20	Chapter Number Assigned		
	Chapter Number 354		
	Effective Date: 10/01/1999 - All Sections		

SB 327 Introduced by Devlin

LC0855 Drafter: Sternberg

Increase the Fee for Recording, Rerecording, or Transferring a Livestock Mark or Brand from \$50 to \$100;...

1/29	Introduced and 1st Reading		
1/29	Referred to Agriculture, Livestock and Irrigation		
1/29	Fiscal Note Requested		
2/04	Fiscal Note Received		
2/04	Fiscal Note Signed		
2/05	Hearing		
2/05	Fiscal Note Printed		
2/11	Committee Executive Action--Bill Passed as Amended	10	0
2/11	Committee Report--Bill Passed as Amended		
2/12	2nd Reading Passed	34	13
2/13	3rd Reading Passed	37	10

1 *Senate* BILL NO. 326
2 INTRODUCED BY TESTER Gallagher-Helco
3 (Primary Sponsor)
4 *Wyatt* *Ellington*

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT, WITH CERTAIN EXCEPTIONS, IT IS A
6 CRIMINAL OFFENSE TO INTERCEPT A COMMUNICATION OVER ANY TYPE OF TELEPHONE, INCLUDING
7 BUT NOT LIMITED TO A CORDED, UNCORDED, CELLULAR, OR SATELLITE PHONE; DEFINING
8 "TELEPHONE" FOR PURPOSES OF THE CRIMINAL CODE; PROVIDING THAT IT IS A CRIME TO PUBLISH
9 CERTAIN INFORMATION BY COMPUTER TO AID IN THE AVOIDANCE OF PAYMENT OF A FEE FOR
10 TELECOMMUNICATIONS SERVICES; AND AMENDING SECTIONS 45-2-101, 45-6-307, AND 45-8-213,
11 MCA."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 Section 1. Section 45-2-101, MCA, is amended to read:

15 "45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken
16 in the objective standard rather than in the subjective, and unless a different meaning plainly is required,
17 the following definitions apply in this title:

18 (1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of
19 communication, and when relevant, a failure or omission to take action.

20 (2) "Administrative proceeding" means any proceeding the outcome of which is required to be
21 based on a record or documentation prescribed by law or in which a law or a regulation is particularized
22 in its application to an individual.

23 (3) "Another" means a person or persons, as defined in this code, other than the offender.

24 (4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or
25 advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested.
26 Benefit does not include an advantage promised generally to a group or class of voters as a consequence
27 of public measures that a candidate engages to support or oppose.

28 (5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and
29 includes mental illness or impairment.

30 (6) "Cohabit" means to live together under the representation of being married.

1 (7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish
2 a single criminal objective or by a common purpose or plan that results in the repeated commission of the
3 same offense or that affects the same person or the same persons or the property of the same person
4 or persons.

5 (8) "Computer" means an electronic device that performs logical, arithmetic, and memory
6 functions by the manipulation of electronic or magnetic impulses and includes all input, output,
7 processing, storage, software, or communication facilities that are connected or related to that device
8 in a system or network.

9 (9) "Computer network" means the interconnection of communication systems between
10 computers or computers and remote terminals.

11 (10) "Computer program" means an instruction or statement or a series of instructions or
12 statements, in a form acceptable to a computer, that in actual or modified form permits the functioning
13 of a computer or computer system and causes it to perform specified functions.

14 (11) "Computer services" include but are not limited to computer time, data processing, and
15 storage functions.

16 (12) "Computer software" means a set of computer programs, procedures, and associated
17 documentation concerned with the operation of a computer system.

18 (13) "Computer system" means a set of related, connected, or unconnected devices, computer
19 software, or other related computer equipment.

20 (14) "Conduct" means an act or series of acts and the accompanying mental state.

21 (15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or
22 upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of
23 competent jurisdiction authorized to try the case without a jury.

24 (16) "Correctional institution" means the state prison, county or city jail, or other institution for
25 the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for
26 offenses.

27 (17) "Deception" means knowingly to:

28 (a) create or confirm in another an impression that is false and that the offender does not believe
29 to be true;

30 (b) fail to correct a false impression that the offender previously has created or confirmed;

1 (c) prevent another from acquiring information pertinent to the disposition of the property
2 involved;

3 (d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or
4 other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or
5 is or is not a matter of official record; or

6 (e) promise performance that the offender does not intend to perform or knows will not be
7 performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

8 (18) "Defamatory matter" means anything that exposes a person or a group, class, or association
9 to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business
10 or occupation.

11 (19) "Deprive" means:

12 (a) to withhold property of another:

13 (i) permanently;

14 (ii) for such a period as to appropriate a portion of its value; or

15 (iii) with the purpose to restore it only upon payment of reward or other compensation; or

16 (b) to dispose of the property of another and use or deal with the property so as to make it
17 unlikely that the owner will recover it.

18 (20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons
19 of the same sex or any form of sexual intercourse with an animal.

20 (21) "Document" means, with respect to offenses involving the medicaid program, any
21 application, claim, form, report, record, writing, or correspondence, whether in written, electronic,
22 magnetic, microfilm, or other form.

23 (22) "Felony" means an offense in which the sentence imposed upon conviction is death or
24 imprisonment in the state prison for any term exceeding 1 year.

25 (23) "Forcible felony" means any felony that involves the use or threat of physical force or
26 violence against any individual.

27 (24) A "frisk" is a search by an external patting of a person's clothing.

28 (25) "Government" includes any branch, subdivision, or agency of the government of the state
29 or any locality within it.

30 (26) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected,

1 including loss, disadvantage, or injury to any person or entity in whose welfare the affected person is
2 interested.

3 (27) A "house of prostitution" means any place where prostitution or promotion of prostitution
4 is regularly carried on by one or more persons under the control, management, or supervision of another.

5 (28) "Human being" means a person who has been born and is alive.

6 (29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being
7 in the possession of a person subject to official detention.

8 (30) "Inmate" means a person who engages in prostitution in or through the agency of a house
9 of prostitution.

10 (31) "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter 32,
11 and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of
12 alcohol by volume. Intoxicating substance does not include dealcoholized wine or any beverage or liquid
13 produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1%
14 of alcohol by volume.

15 (32) An "involuntary act" means any act that is:

16 (a) a reflex or convulsion;

17 (b) a bodily movement during unconsciousness or sleep;

18 (c) conduct during hypnosis or resulting from hypnotic suggestion; or

19 (d) a bodily movement that otherwise is not a product of the effort or determination of the actor,
20 either conscious or habitual.

21 (33) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by
22 any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury
23 in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned
24 to attend as a prospective juror.

25 (34) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described
26 by a statute defining an offense when the person is aware of the person's own conduct or that the
27 circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute
28 defining an offense when the person is aware that it is highly probable that the result will be caused by
29 the person's conduct. When knowledge of the existence of a particular fact is an element of an offense,
30 knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such

as "knowing" or "with knowledge", have the same meaning.

(35) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(36) "Medicaid agency" has the meaning in 53-6-155.

(37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(38) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes any related documents submitted as a part of or in support of the claim.

(39) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

(40) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(41) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or for which the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(42) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(43) "Obtain" means:

1 (a) in relation to property, to bring about a transfer of interest or possession, whether to the
2 offender or to another; and

3 (b) in relation to labor or services, to secure the performance of the labor or service.

4 (44) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the
5 sale, conveyance, or transfer of title to, interest in, or possession of property.

6 (45) "Occupied structure" means any building, vehicle, or other place suitable for human
7 occupancy or night lodging of persons or for carrying on business, whether or not a person is actually
8 present. Each unit of a building consisting of two or more units separately secured or occupied is a
9 separate occupied structure.

10 (46) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or
11 punished for a public offense.

12 (47) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is
13 authorized. Offenses are classified as felonies or misdemeanors.

14 (48) "Official detention" means imprisonment resulting from a conviction for an offense,
15 confinement for an offense, confinement of a person charged with an offense, detention by a peace
16 officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose
17 of the protection of the welfare of the person detained or for the protection of society. Official detention
18 does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful
19 arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to
20 escape.

21 (49) "Official proceeding" means a proceeding heard or that may be heard before any legislative,
22 judicial, administrative, or other governmental agency or official authorized to take evidence under oath,
23 including any referee, hearing examiner, commissioner, notary, or other person taking testimony or
24 deposition in connection with the proceeding.

25 (50) "Other state" means any state or territory of the United States, the District of Columbia, and
26 the Commonwealth of Puerto Rico.

27 (51) "Owner" means a person other than the offender who has possession of or any other interest
28 in the property involved, even though the interest or possession is unlawful, and without whose consent
29 the offender has no authority to exert control over the property.

30 (52) "Party official" means a person who holds an elective or appointive post in a political party

1 in the United States by virtue of which the person directs or conducts or participates in directing or
2 conducting party affairs at any level of responsibility.

3 (53) "Peace officer" means any person who by virtue of the person's office or public employment
4 is vested by law with a duty to maintain public order or to make arrests for offenses while acting within
5 the scope of the person's authority.

6 (54) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or
7 anything else the primary significance of which is economic gain.

8 (55) "Person" includes an individual, business association, partnership, corporation, government,
9 or other legal entity and an individual acting or purporting to act for or on behalf of any government or
10 subdivision of government.

11 (56) "Physically helpless" means that a person is unconscious or is otherwise physically unable
12 to communicate unwillingness to act.

13 (57) "Possession" is the knowing control of anything for a sufficient time to be able to terminate
14 control.

15 (58) "Premises" includes any type of structure or building and any real property.

16 (59) "Property" means any tangible or intangible thing of value. Property includes but is not limited
17 to:

18 (a) real estate;

19 (b) money;

20 (c) commercial instruments;

21 (d) admission or transportation tickets;

22 (e) written instruments that represent or embody rights concerning anything of value, including
23 labor or services, or that are otherwise of value to the owner;

24 (f) things growing on, affixed to, or found on land and things that are part of or affixed to any
25 building;

26 (g) electricity, gas, and water;

27 (h) birds, animals, and fish that ordinarily are kept in a state of confinement;

28 (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents,
29 blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models
30 thereof;

1 (j) any other articles, materials, devices, substances, and any whole or partial copies,
2 descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or
3 record secret scientific, technical, merchandising, production, or management information or a secret
4 designed process, procedure, formula, invention, or improvement; and

5 (k) electronic impulses, electronically processed or produced data or information, commercial
6 instruments, computer software or computer programs, in either machine- or human-readable form,
7 computer services, any other tangible or intangible item of value relating to a computer, computer system,
8 or computer network, and any copies thereof.

9 (60) "Property of another" means real or personal property in which a person other than the
10 offender has an interest that the offender has no authority to defeat or impair, even though the offender
11 may have an interest in the property.

12 (61) "Public place" means any place to which the public or any substantial group has access.

13 (62) "Public servant" means any officer or employee of government, including but not limited to
14 legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant,
15 administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The
16 term "public servant" includes one who has been elected or designated to become a public servant.

17 (63) "Purposely"--a person acts purposely with respect to a result or to conduct described by a
18 statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that
19 result. When a particular purpose is an element of an offense, the element is established although the
20 purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law
21 defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same
22 meaning.

23 (64) (a) "Serious bodily injury" means bodily injury that:

24 (i) creates a substantial risk of death;

25 (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or
26 process of any bodily member or organ; or

27 (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement
28 or protracted loss or impairment of the function or process of any bodily member or organ.

29 (b) The term includes serious mental illness or impairment.

30 (65) "Sexual contact" means any touching of the sexual or other intimate parts of the person of

1 another for the purpose of arousing or gratifying the sexual desire of either party.

2 (66) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the
3 penis of another person, penetration of the vulva or anus of one person by any body member of another
4 person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated
5 by another person for the purpose of arousing or gratifying the sexual desire of either party. Any
6 penetration, however slight, is sufficient.

7 (67) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise
8 another to commit an offense.

9 (68) "State" or "this state" means the state of Montana, all the land and water in respect to
10 which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the
11 land and water.

12 (69) "Statute" means any act of the legislature of this state.

13 (70) "Stolen property" means property over which control has been obtained by theft.

14 (71) A "stop" is the temporary detention of a person that results when a peace officer orders the
15 person to remain in the peace officer's presence.

16 (72) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted
17 alterations in its existing condition, or deposit refuse upon it.

18 (73) "Telephone" means any type of telephone, including but not limited to a corded, uncorded,
19 cellular, or satellite telephone.

20 ~~(73)~~(74) "Threat" means a menace, however communicated, to:

- 21 (a) inflict physical harm on the person threatened or any other person or on property;
22 (b) subject any person to physical confinement or restraint;
23 (c) commit any criminal offense;
24 (d) accuse any person of a criminal offense;
25 (e) expose any person to hatred, contempt, or ridicule;
26 (f) harm the credit or business repute of any person;
27 (g) reveal any information sought to be concealed by the person threatened;
28 (h) take action as an official against anyone or anything, withhold official action, or cause the
29 action or withholding;
30 (i) bring about or continue a strike, boycott, or other similar collective action if the person making

1 the threat demands or receives property that is not for the benefit of groups that the person purports to
2 represent; or

3 (j) testify or provide information or withhold testimony or information with respect to another's
4 legal claim or defense.

5 ~~(74)~~(75) (a) "Value" means the market value of the property at the time and place of the crime
6 or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property
7 within a reasonable time after the crime. If the offender appropriates a portion of the value of the
8 property, the value must be determined as follows:

9 (i) The value of an instrument constituting an evidence of debt, such as a check, draft, or
10 promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of
11 the indebtedness less any portion of the indebtedness that has been satisfied.

12 (ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any
13 valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of
14 the instrument might reasonably suffer by virtue of the loss of the instrument.

15 (iii) The value of electronic impulses, electronically produced data or information, computer
16 software or programs, or any other tangible or intangible item relating to a computer, computer system,
17 or computer network is considered to be the amount of economic loss that the owner of the item might
18 reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss
19 includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition
20 of the item.

21 (b) When it cannot be determined if the value of the property is more or less than \$500 by the
22 standards set forth in subsection ~~(74)(a)~~ (75)(a), its value is considered to be an amount less than \$500.

23 (c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,
24 whether from the same person or several persons, may be aggregated in determining the value of the
25 property.

26 ~~(75)~~(76) "Vehicle" means any device for transportation by land, water, or air or by mobile
27 equipment, with provision for transport of an operator.

28 ~~(76)~~(77) "Weapon" means any instrument, article, or substance that, regardless of its primary
29 function, is readily capable of being used to produce death or serious bodily injury.

30 ~~(77)~~(78) "Witness" means a person whose testimony is desired in any official proceeding, in any

1 investigation by a grand jury, or in a criminal action, prosecution, or proceeding."
2

3 Section 2. Section 45-6-307, MCA, is amended to read:

4 "45-6-307. Aiding the avoidance of telecommunications charges. (1) A person commits the
5 offense of aiding the avoidance of telecommunications charges when ~~he~~ the person:

6 (a) publishes the number or code of an existing, canceled, revoked, expired, or nonexistent
7 telephone credit card or the numbering or coding ~~which~~ that is employed in the issuance of credit cards
8 with the purpose that it will be used to avoid the payment of lawful telecommunications charges;

9 (b) publishes, advertises, sells, gives, or otherwise transfers to another plans or instructions for
10 the making or assembling of any apparatus, instrument, equipment, or device described in 45-6-306(4)
11 with the purpose that ~~such~~ it will be used or with the knowledge or reason to believe that ~~such~~ it will be
12 used to avoid the payment of lawful telecommunications charges; or

13 (c) manufactures, assembles, possesses, sells, gives, or otherwise transfers any apparatus,
14 instrument, equipment, or device described in 45-6-306(4) with the purpose that it will be used to avoid
15 the payment of lawful telecommunications charges.

16 (2) A person convicted of the offense of aiding the avoidance of telecommunications charges shall
17 be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or
18 both.

19 (3) For the purposes of this section, the term "publish" means to communicate information to any
20 one or more persons, either orally; in person; by computer, telephone, radio, or television; or in a writing
21 of any kind, including but not limited to a letter, memorandum, circular, handbill, newspaper or magazine
22 article, or book."
23

24 Section 3. Section 45-8-213, MCA, is amended to read:

25 "45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits
26 the offense of violating privacy in communications if ~~he~~ the person knowingly or purposely:

27 (a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with
28 ~~any~~ a person by telephone and uses ~~any~~ obscene, lewd, or profane language, suggests ~~any~~ a lewd or
29 lascivious act, or threatens to inflict injury or physical harm to the person or property of ~~any~~ the person.
30 ~~(the~~ The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious

1 suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend;

2 (b) uses a telephone to attempt to extort money or any other thing of value from ~~any~~ a person
3 or to disturb by repeated telephone calls the peace, quiet, or right of privacy of ~~any~~ a person at the place
4 where the telephone call or calls are received;

5 (c) records or causes to be recorded ~~any~~ a conversation by use of a hidden electronic or
6 mechanical device ~~which~~ that reproduces a human conversation without the knowledge of all parties to
7 the conversation or intercepts a telephonic communication. ~~Subsection (c)~~ This subsection (1)(c) does not
8 apply to ~~duly~~ elected or appointed public officials or employees when the transcription, or recording, or
9 interception is done in the performance of official duty, to persons speaking at public meetings, or to
10 persons given warning of the transcription, recording, or interception.

11 (d) by means of any machine, instrument, or contrivance or in any other manner:

12 (i) reads or attempts to read ~~any~~ a message or learn the contents ~~thereof~~ of a message while it
13 is being sent over a telegraph line;

14 (ii) learns or attempts to learn the contents of ~~any~~ a message while it is in a telegraph office or
15 is being received ~~thereat~~ at or sent ~~therefrom~~ from a telegraph office; or

16 (iii) uses, attempts to use, or communicates to others any information ~~so~~ obtained as provided in
17 this subsection (1)(d);

18 (e) discloses the contents of a telegraphic message or any part ~~thereof~~ of a telegraphic message
19 addressed to another person without the permission of ~~such~~ the person, unless directed to do so by the
20 lawful order of a court; or

21 (f) opens or reads or causes to be read any sealed letter not addressed to ~~himself~~ the person
22 opening the letter without being authorized to do so by either the writer of the letter or the person to
23 whom it is addressed or, without the like authority, publishes any of the contents of the letter knowing
24 the ~~same~~ letter to have been unlawfully opened.

25 (2) (a) A person convicted of the offense of violating privacy in communications shall be fined
26 not to exceed \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

27 (b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the
28 county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

29 (c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned
30 in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$10,000, or

1 both."

2

- END -

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By CHAIRMAN JOHN HERTEL, on February 4, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 307, 1/29/1999
SB 318, 1/29/1999
SB 326, 1/29/1999

Executive Action: None

understood there wasn't too much difference between the two. He did understand, though, that PSC would be in control and he didn't know if it would be necessary to keep MDU's "feet to the fire" to get this problem taken care of.

Closing by Sponsor:

SENATOR WALTER MCNUTT. We're talking about 23,000+ customers and that's why I brought the bill. My biggest concern is we have yet to pass legislation to exceed our borders -- we can't impact North & South Dakota. If we could have and said all MDU would deregulate and provide customer choice, I wouldn't be standing before you today. I am one of those customers and am one of the guys who provides jobs in eastern Montana; yet, times are tough. However, we don't want the cost to shift, because we want to allow four customers to have a better rate and make that portion of Montana stand alone in deregulation, because it will impact my power bill. We need to move forward and SB 318 is cautionary; perhaps the fraud does not apply here. Take a close look at the amendments -- we have enough trouble in eastern Montana without increasing those costs. I've talked to a couple of the large customers and others with whom I do business and they're not excited about the prospect of being tagged with those costs, instead of spreading them throughout the system. I don't want to come back next session or the one after with a bill that says things have to change because we can't afford the power bills over there.

{Tape : 2; Side : A; Approx. Time Counter : 0}

HEARING ON SB 326

Sponsor: SENATOR JON TESTER, SD 45, BIG SANDY

Proponents: Mike Strand, MT Independent Telecommunications
Systems

Geoff Feiss, MT Telecommunications Assoc.

Tim Rixdorf, Sagebrush Cellular

Jerry Williams, MT Police Protective Assoc.

Mike Batista, Dept. of Justice

Bob Anderson, MT Sheriffs & Peace Officers Assoc.

Opponents: None

Opening Statement by Sponsor:

SENATOR JON TESTER, SD 45, BIG SANDY. This bill makes it a criminal offense to intercept communication over a cellular or cordless telephone. It's a cleanup of a statute -- most people think if they listen in on a cellular message, it's illegal but it's not at this time; however, this bill is trying to make it an enforceable offense. The changes in the bill start occurring on Page 9 with the definition of "telephone", and Page 12 talks about the actual intercepting of the telephone communication. It's important this must be done purposely and knowingly to be an offense.

Proponents' Testimony:

Mike Strand, Montana Independent Telecommunications Systems. The wireless telecommunications industry is one of the fastest-growing segments of the industry as a whole. There's a small but growing reluctance on the part of some users to use their cell phones because of folks using scanning equipment to listen in on cellular phone conversations. Not only is this practice an invasion of privacy, it is also harmful to the prospects of a valuable growth industry in Montana. I urge the Committee to pass SB 326.

Geoff Feiss, Montana Telecommunications Systems. We too support this bill for the same reasons -- we think it's great legislation. I'd like to offer an amendment for Section 3, Lines 8-10, to add "telephone companies that are complying with law enforcement officers."

Tim Rixdorf, Sagebrush Cellular. We've had several people approach us and have been concerned because of their expectation of a certain level of privacy. When they find out that someone has picked up their transmission and shared that information, it's disturbing and harmful. We've had customers comment they're not going to use their phones as much and that decreases potential revenue for us. Law enforcement officers have said they don't have the time to enforce the federal law; however, they have said they would be glad to enforce a law like this.

{Tape : 2; Side : A; Approx. Time Counter : 7.4}

Jerry Williams, Montana Police Protective Association. Our Association endorses this bill and we hope you give it a DO PASS recommendation.

Mike Batista, Department of Justice. We support the bill and believe it provides some insurance mechanisms for protecting privacy of Montana citizens.

Bob Anderson, Montana Sheriffs and Peace Officers Association. We also support the bill for the same reasons previously discussed.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked the meaning of "aiding the avoidance of telecommunications charges" on Page 11, Section 2. **Bart Campbell** said it basically meant coming up with various methods or devices to get out of paying your phone bill.

SEN. COCCHIARELLA asked the meaning when "by computer" was added on Line 20. **Mr. Campbell** said it was a method by which you were making it known you had some way of beating the phone charges, i.e. Internet. **SEN. TESTER** said there were methods by which people could get away from paying their charges through illegal means -- radio, television, Internet, etc. **Mike Strand** said it meant the use of calling cards -- there were methods by which you could clone calling cards or use their numbers for a profit so folks end up charging their calls to other folks' calling cards.

SEN. BEA MCCARTHY asked how easy it was to record or tap into a neighbor's cell phone conversation. **Tim Rixdorf** said a cordless phone was one usually found in a home and was different from a cell phone because they operated on two different frequency ranges. In the past they made scanners that would scan cellular frequencies; in fact, in 1993 when FCC mandated those scanners no longer be manufactured that would scan cellular frequencies. However, it has been very easy to modify these scanners made since 1993 so these frequencies could be scanned; in fact, the instructions for doing this can be found on the Internet. Another issue is the manufacturers put a block in the scanner for 824-896 megahertz, which causes sort of a mirror in the upper

scanner frequencies; therefore, starting at 896-900 megahurts range, you are able to pick up the 800 megahurts transmissions. He distributed copies of **EXHIBIT(12)** and **EXHIBIT(13)**.

SEN. MCCARTHY said it would be possible for a customer to easily pick up a scanner at Radio Shack, etc., and deliberately listen in on a cell phone conversation. **Mr. Rixdorf** affirmed.

{Tape : 2; Side : A; Approx. Time Counter : 15.5}

SEN. GLENN ROUSH admitted he had one of those scanners and was able to pick up conversations; however, he came from a small community and when he identified who was talking, he called them and informed them what was happening. He asked if **SB 326** included liability for repeating what was heard. **Tim Rixdorf** said it should be because all the scanners allow the capability to block out certain frequency ranges. Also, you have to set the scanner up to go into a scandal because the cell phones were designed to transmit into a different frequency each time it was dialed; therefore, someone has to purposely intend to monitor a cell phone conversation. The intent here is to try to eliminate that because the cell phone conversation should be private.

SEN. ROUSH asked why the consumer, not knowing that, would have to take the liability to get rid of the problem. **Mr. Rixdorf** said the bill said "purposely and knowingly" to go ahead and block those ranges out. You have to actually set the scanner up in order to receive the transmission of the cellular call and while it's doing that, it's not going to be picking up any other transmissions.

SEN. ROUSH asked if the scanner manufacturing company would be willing to correct the problem at its expense, if the customer would want that done. **Tim Rixdorf** said he doubted it because this was a national problem and had been brought to the manufacturers' attention in the past -- they wanted to make scanners that scanned cellular frequencies because it was a big revenue for them.

SEN. MIKE SPRAGUE commented since scanners to pick up cell phone conversations could no longer be manufactured, we were talking about scanners made before 1993. **Tim Rixdorf** said that was correct, but they were also talking about new scanners that could

be easily modified to pick up cellular frequencies; in fact, the biggest problem was not with the old scanners.

SEN. SPRAGUE asked if it was illegal to modify them and was told it was federally illegal.

SEN. SPRAGUE asked if he were an individual who was anticipating a threat to his life, or as a public official was in the process of getting a bribe, would it be against the law to anticipate that as being a crime in process or being committed. **Jerry Williams** said as he understood the statute, if he recorded a cell phone conversation without the other party's knowledge, that was against the law; however, if he was offering a bribe, which was a crime because of your status as a public official, and the other party was recording the conversation, that was a crime in progress. Therefore, that would be legal to record without the other party's knowledge.

SEN. SPRAGUE referred to his hypothetical situation and said he didn't know for certain a crime was being committed -- he just surmised it. Therefore, he made the recording, though the surmised crime never materialized and he never used the recording, therefore, nothing illegal was done. He said he didn't want to get citizens into a situation where they couldn't protect themselves. **Jerry Williams** said in **SEN. SPRAGUE'S** official capacity if he suspected their conversation would go awry and he (**Williams**) may offer a bribe or commit some other criminal offense and **SEN. SPRAGUE** began to record the conversation without his knowledge; however, he (**Williams**) doesn't actually commit the criminal offense so **SEN. SPRAGUE** would destroy the recording. **Jerry Williams** said he didn't think in that case, there would be any criminal liability on **SEN. SPRAGUE'S** part because he was acting as a public official; however, if he took the recording to defame his seedy character, it would be illegal.

SEN. SPRAGUE asked about an elderly person who had a scanner and wanted to keep up with the fire, police, ambulance, etc., and wondered if those scanners would be illegal. **Jerry Williams** said they wouldn't because the statute was clear in that you had to purposely and knowingly do this in order to commit the criminal offense. If he was sitting at home listening to his scanner, and a cell phone conversation came over that scanner without his

knowledge, he wouldn't have done anything wrong. However, if he recorded those conversations and used them to harass, intimidate or threaten, he would have committed a crime.

{Tape : 2; Side : A; Approx. Time Counter : 24.7}

Closing by Sponsor:

SENATOR JON TESTER. Keep in mind a couple of things: (1) This bill is to protect privacy; (2) The listening has to be done purposely and knowingly. Right now it's illegal to manufacture scanners that can scan the cell phone frequencies. We're talking about people who have the intent to do this; I wouldn't be paranoid that some elderly folks could be thrown into jail. I urge a DO PASS on SB 326.

Digital cell phone code broken by researchers

SAN FRANCISCO (AP) — A few minutes work on a computer can break the codes that are supposed to protect new digital cellular phone technology from eavesdroppers, a team of researchers said Thursday.

The cellular phone industry claimed the effect on users would be "virtually none," since engineers were working to strengthen the encryption and since a separate code that scrambles voices was not broken.

The Cellular Telecommunications Industry Association also denied that its codes could be broken so easily.

"It involves very sophisticated knowledge," an association statement said. "The announced attack requires multiple minutes — up to hours — of high speed computer processing to break the coded message."

But Bruce Schneier, one of the high-tech code breakers, called the implications serious for the new generation of digital phones.

He said they were able to break the code that protects transmissions between the cell phone and the central system — including dialed phone digits, credit card numbers, passwords and account numbers.

"We're talking about a few minutes on a computer — a high-end Pentium, not a work station, one you might have on your desk," he said.

He also said the code that protects voices was broken years ago.

Schneier emphasized that they only cracked the codes used by the U.S. cellular phone system, not on the system used in Europe. The U.S. cellular industry agreed to a weaker encryption system under pressure from the Clinton administration.

News

FCC Toughens Scanner Rules

By Edward Warner

WASHINGTON—Although new scanners sold in the United States can't pick up cellular calls directly, they can eavesdrop on a call's "images" on other bands.

That means fraudsters can still buy a new scanner to capture mobile identification numbers from the airwaves, said Tom McClure, director for fraud management at the Cellular Telecommunications Industry Association. The cheaper the scanner, the more likely it will receive image-band traffic, due to its lack of filtering, McClure said.

However, recently proposed FCC rules would require new

scanners to become sufficiently filtered to prevent them from receiving call images and to have their tuning components encased in epoxy or otherwise protected from intentional tampering. The new rules were proposed by Uniden America Corp., a scanner maker, and the FCC said the proposal engendered no opposition—a rarity considering scanning popularity.

Some scanner dealers don't like the rules, however. Greg Chatten, president of Advanced Digital Systems of St. Louis Inc., said the regulations will hurt U.S. retailers while increasing foreign dealers' revenue. That's because Americans can buy cel-

lular-capable scanners from Canadian and other foreign retailers, he said. A British retailer called Broadercasting Communication Systems, for example, advertises on the Web its Winradio 1000i, a scanner that covers 500 kHz to 1300 MHz, which includes the cellular band.

"People will continue to get the [cellular-capable] product from other sources," Chatten said. "I don't think [the FCC] wants us to listen to anything."

The FCC also proposed a redefinition of "scanner," which now refers to radio equipment that automatically scans more than four frequencies. The commission suggested including manually tuned

scanners and those that scan fewer frequencies, but work in illegal ranges. An even broader definition may be needed. Chatten said one brand of amateur radio transceiver needs only a "five-minute modification" to become a cellular band scanner.

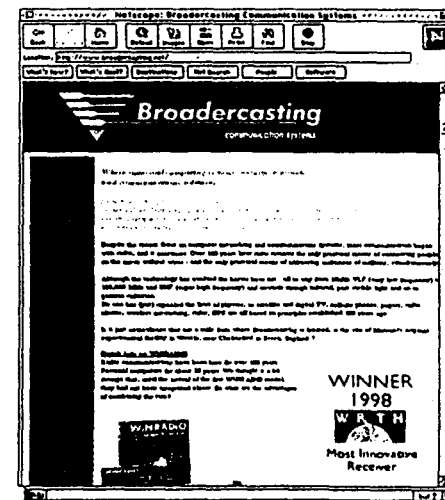
The FCC also said it's thinking of restricting the importation or manufacturing of scanner kits, perhaps requiring them to "block cellular service frequencies, just like finished products."

According to Chatten, communications on any frequency are replicated on three other "harmonic" frequencies that are easy to find but are "so weak, [they're] pretty worthless." He said that if the cellular industry wants to ensure call privacy it should not push for more laws but pay the cost of going digital.

However, McClure said the industry is going digital as fast as it can but still must support as many as 38 million analog phones. Regarding the strength of the image-band communications, he pointed to a recent case where a man used such a new scanner to eavesdrop on local cellular users and harass them with

the information he gained.

Listening to cellular calls is a federal crime, although it's not a violation of that law to listen to calls on cordless phones or personal communications services handsets. But last year, Rep.



Broadercasting Communication Systems advertises its Winradio 1000i scanner on the Web.

Billy Tauzin, R-La., encouraged the House passage of a bill closing the loophole and banning the manufacture or after-market production of scanners that can listen in on any interconnected wireless service. The bill was referred to the Senate Commerce Committee, which is "trying to find time to move it" to the Senate floor, according to Tauzin spokesman Ken Johnson. **W**

Southern Cellular, Inc.

has sold all of the Wireline Cellular assets of RSA

May 1998

SENATE BUSINESS & INDUSTRY

EXHIBIT NO.

DATE 2-4-99

BILL NO. SB 326

DATE 2-4-99

[illegible]

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 5, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)

Members Excused: Sen. Mike Sprague, Vice Chairman (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 331, 2/2/1999
SB 332, 2/2/1999
Executive Action: SB 304; SB 289
SB 107; SB 326
SB 263; SB 307

{Tape : 1; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON SB 263

Motion: SEN. COCCHIARELLA moved that SB 263 DO NOT PASS.

EXECUTIVE ACTION ON SB 107

Motion: SEN. COCCHIARELLA moved that SB 107 DO PASS.

Motion: SEN. MCCARTHY moved that SB 107 BE AMENDED EXHIBIT(3).

Discussion: Mr. Campbell explained that most were just clean-up or clarification amendments.

Vote: Motion that SB 107 BE AMENDED carried unanimously. 5-0

Motion/Vote: SEN. ROUSH moved that SB 107 DO PASS AS AMENDED.
Motion carried unanimously. 5-0

{Tape : 1; Side : A; Approx. Time Counter : 9 - 22.9; Comments :
SB 275 was discussed during this time frame.}

EXECUTIVE ACTION ON SB 307

Motion: SEN. BERRY moved that SB 307 DO PASS.

Discussion: SEN. VICKI COCCHIARELLA moved to amendment this bill to take out New Sections, Section 2 and Section 3.

Vote: Motion that SB 307 BE AMENDED carried unanimously. 5-0

Discussion: SEN. COCCHIARELLA was concerned about the looseness of the language on line 28 "prohibited lottery games include, but are not limited to those representing" and what is "sports betting". Mr. Campbell tried to explain to the best of his ability but he was not entirely sure.

Substitute Motion/Vote: SEN. MCCARTHY made a substitute motion that SB 307 BE TABLED. Substitute motion carried unanimously.
5-0

EXECUTIVE ACTION ON SB 326

Motion/Vote: SEN. COCCHIARELLA moved that SB 326 DO PASS. Motion carried unanimously. 5-0



SENATE STANDING COMMITTEE REPORT

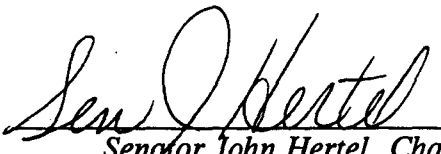
February 5, 1999

Page 1 of 1

Mr. President:

We, your committee on **Business and Industry** report that **Senate Bill 326** (first reading copy -- white) **do pass**.

Signed:


Senator John Hertel, Chair

- END -

Committee Vote:
Yes 5, No 0.

291237SC.srf

Senate BILL NO. 326

INTRODUCED BY

Tester
(Primary Sponsor)

Galvin-Helco

Wyatt *Ullrich*
A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT, WITH CERTAIN EXCEPTIONS, IT IS A CRIMINAL OFFENSE TO INTERCEPT A COMMUNICATION OVER ANY TYPE OF TELEPHONE, INCLUDING BUT NOT LIMITED TO A CORDED, UNCORDED, CELLULAR, OR SATELLITE PHONE; DEFINING "TELEPHONE" FOR PURPOSES OF THE CRIMINAL CODE; PROVIDING THAT IT IS A CRIME TO PUBLISH CERTAIN INFORMATION BY COMPUTER TO AID IN THE AVOIDANCE OF PAYMENT OF A FEE FOR TELECOMMUNICATIONS SERVICES; AND AMENDING SECTIONS 45-2-101, 45-6-307, AND 45-8-213, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

APPROVED BY COM ON
BUSINESS & INDUSTRY*Senate* BILL NO. 326

INTRODUCED BY

(Primary Sponsor)

Tester *Gallagher*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT, WITH CERTAIN EXCEPTIONS, IT IS A CRIMINAL OFFENSE TO INTERCEPT A COMMUNICATION OVER ANY TYPE OF TELEPHONE, INCLUDING BUT NOT LIMITED TO A CORDED, UNCORDED, CELLULAR, OR SATELLITE PHONE; DEFINING "TELEPHONE" FOR PURPOSES OF THE CRIMINAL CODE; PROVIDING THAT IT IS A CRIME TO PUBLISH CERTAIN INFORMATION BY COMPUTER TO AID IN THE AVOIDANCE OF PAYMENT OF A FEE FOR TELECOMMUNICATIONS SERVICES; AND AMENDING SECTIONS 45-2-101, 45-6-307, AND 45-8-213, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested. Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

1 (7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish
2 a single criminal objective or by a common purpose or plan that results in the repeated commission of the
3 same offense or that affects the same person or the same persons or the property of the same person
4 or persons.

5 (8) "Computer" means an electronic device that performs logical, arithmetic, and memory
6 functions by the manipulation of electronic or magnetic impulses and includes all input, output,
7 processing, storage, software, or communication facilities that are connected or related to that device
8 in a system or network.

9 (9) "Computer network" means the interconnection of communication systems between
10 computers or computers and remote terminals.

11 (10) "Computer program" means an instruction or statement or a series of instructions or
12 statements, in a form acceptable to a computer, that in actual or modified form permits the functioning
13 of a computer or computer system and causes it to perform specified functions.

14 (11) "Computer services" include but are not limited to computer time, data processing, and
15 storage functions.

16 (12) "Computer software" means a set of computer programs, procedures, and associated
17 documentation concerned with the operation of a computer system.

18 (13) "Computer system" means a set of related, connected, or unconnected devices, computer
19 software, or other related computer equipment.

20 (14) "Conduct" means an act or series of acts and the accompanying mental state.

21 (15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or
22 upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of
23 competent jurisdiction authorized to try the case without a jury.

24 (16) "Correctional institution" means the state prison, county or city jail, or other institution for
25 the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for
26 offenses.

27 (17) "Deception" means knowingly to:

28 (a) create or confirm in another an impression that is false and that the offender does not believe
29 to be true;

30 (b) fail to correct a false impression that the offender previously has created or confirmed;

1 (c) prevent another from acquiring information pertinent to the disposition of the property
2 involved;

3 (d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or
4 other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or
5 is or is not a matter of official record; or

6 (e) promise performance that the offender does not intend to perform or knows will not be
7 performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

8 (18) "Defamatory matter" means anything that exposes a person or a group, class, or association
9 to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business
10 or occupation.

11 (19) "Deprive" means:

12 (a) to withhold property of another:

13 (i) permanently;

14 (ii) for such a period as to appropriate a portion of its value; or

15 (iii) with the purpose to restore it only upon payment of reward or other compensation; or

16 (b) to dispose of the property of another and use or deal with the property so as to make it
17 unlikely that the owner will recover it.

18 (20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons
19 of the same sex or any form of sexual intercourse with an animal.

20 (21) "Document" means, with respect to offenses involving the medicaid program, any
21 application, claim, form, report, record, writing, or correspondence, whether in written, electronic,
22 magnetic, microfilm, or other form.

23 (22) "Felony" means an offense in which the sentence imposed upon conviction is death or
24 imprisonment in the state prison for any term exceeding 1 year.

25 (23) "Forcible felony" means any felony that involves the use or threat of physical force or
26 violence against any individual.

27 (24) A "frisk" is a search by an external patting of a person's clothing.

28 (25) "Government" includes any branch, subdivision, or agency of the government of the state
29 or any locality within it.

30 (26) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected,

1 including loss, disadvantage, or injury to any person or entity in whose welfare the affected person is
2 interested.

3 (27) A "house of prostitution" means any place where prostitution or promotion of prostitution
4 is regularly carried on by one or more persons under the control, management, or supervision of another.

5 (28) "Human being" means a person who has been born and is alive.

6 (29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being
7 in the possession of a person subject to official detention.

8 (30) "Inmate" means a person who engages in prostitution in or through the agency of a house
9 of prostitution.

10 (31) "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter 32,
11 and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of
12 alcohol by volume. Intoxicating substance does not include dealcoholized wine or any beverage or liquid
13 produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1%
14 of alcohol by volume.

15 (32) An "involuntary act" means any act that is:

16 (a) a reflex or convulsion;

17 (b) a bodily movement during unconsciousness or sleep;

18 (c) conduct during hypnosis or resulting from hypnotic suggestion; or

19 (d) a bodily movement that otherwise is not a product of the effort or determination of the actor,
20 either conscious or habitual.

21 (33) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by
22 any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury
23 in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned
24 to attend as a prospective juror.

25 (34) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described
26 by a statute defining an offense when the person is aware of the person's own conduct or that the
27 circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute
28 defining an offense when the person is aware that it is highly probable that the result will be caused by
29 the person's conduct. When knowledge of the existence of a particular fact is an element of an offense,
30 knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such

as "knowing" or "with knowledge", have the same meaning.

(35) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(36) "Medicaid agency" has the meaning in 53-6-155.

(37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(38) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes any related documents submitted as a part of or in support of the claim.

(39) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

(40) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(41) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or for which the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(42) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(43) "Obtain" means:

1 (a) in relation to property, to bring about a transfer of interest or possession, whether to the
2 offender or to another; and

3 (b) in relation to labor or services, to secure the performance of the labor or service.

4 (44) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the
5 sale, conveyance, or transfer of title to, interest in, or possession of property.

6 (45) "Occupied structure" means any building, vehicle, or other place suitable for human
7 occupancy or night lodging of persons or for carrying on business, whether or not a person is actually
8 present. Each unit of a building consisting of two or more units separately secured or occupied is a
9 separate occupied structure.

10 (46) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or
11 punished for a public offense.

12 (47) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is
13 authorized. Offenses are classified as felonies or misdemeanors.

14 (48) "Official detention" means imprisonment resulting from a conviction for an offense,
15 confinement for an offense, confinement of a person charged with an offense, detention by a peace
16 officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose
17 of the protection of the welfare of the person detained or for the protection of society. Official detention
18 does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful
19 arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to
20 escape.

21 (49) "Official proceeding" means a proceeding heard or that may be heard before any legislative,
22 judicial, administrative, or other governmental agency or official authorized to take evidence under oath,
23 including any referee, hearing examiner, commissioner, notary, or other person taking testimony or
24 deposition in connection with the proceeding.

25 (50) "Other state" means any state or territory of the United States, the District of Columbia, and
26 the Commonwealth of Puerto Rico.

27 (51) "Owner" means a person other than the offender who has possession of or any other interest
28 in the property involved, even though the interest or possession is unlawful, and without whose consent
29 the offender has no authority to exert control over the property.

30 (52) "Party official" means a person who holds an elective or appointive post in a political party

1 in the United States by virtue of which the person directs or conducts or participates in directing or
2 conducting party affairs at any level of responsibility.

3 (53) "Peace officer" means any person who by virtue of the person's office or public employment
4 is vested by law with a duty to maintain public order or to make arrests for offenses while acting within
5 the scope of the person's authority.

6 (54) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or
7 anything else the primary significance of which is economic gain.

8 (55) "Person" includes an individual, business association, partnership, corporation, government,
9 or other legal entity and an individual acting or purporting to act for or on behalf of any government or
10 subdivision of government.

11 (56) "Physically helpless" means that a person is unconscious or is otherwise physically unable
12 to communicate unwillingness to act.

13 (57) "Possession" is the knowing control of anything for a sufficient time to be able to terminate
14 control.

15 (58) "Premises" includes any type of structure or building and any real property.

16 (59) "Property" means any tangible or intangible thing of value. Property includes but is not limited
17 to:

18 (a) real estate;

19 (b) money;

20 (c) commercial instruments;

21 (d) admission or transportation tickets;

22 (e) written instruments that represent or embody rights concerning anything of value, including
23 labor or services, or that are otherwise of value to the owner;

24 (f) things growing on, affixed to, or found on land and things that are part of or affixed to any
25 building;

26 (g) electricity, gas, and water;

27 (h) birds, animals, and fish that ordinarily are kept in a state of confinement;

28 (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents,
29 blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models
30 thereof;

1 (j) any other articles, materials, devices, substances, and any whole or partial copies,
2 descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or
3 record secret scientific, technical, merchandising, production, or management information or a secret
4 designed process, procedure, formula, invention, or improvement; and

5 (k) electronic impulses, electronically processed or produced data or information, commercial
6 instruments, computer software or computer programs, in either machine- or human-readable form,
7 computer services, any other tangible or intangible item of value relating to a computer, computer system,
8 or computer network, and any copies thereof.

9 (60) "Property of another" means real or personal property in which a person other than the
10 offender has an interest that the offender has no authority to defeat or impair, even though the offender
11 may have an interest in the property.

12 (61) "Public place" means any place to which the public or any substantial group has access.

13 (62) "Public servant" means any officer or employee of government, including but not limited to
14 legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant,
15 administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The
16 term "public servant" includes one who has been elected or designated to become a public servant.

17 (63) "Purposely"--a person acts purposely with respect to a result or to conduct described by a
18 statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that
19 result. When a particular purpose is an element of an offense, the element is established although the
20 purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law
21 defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same
22 meaning.

23 (64) (a) "Serious bodily injury" means bodily injury that:

24 (i) creates a substantial risk of death;

25 (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or
26 process of any bodily member or organ; or

27 (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement
28 or protracted loss or impairment of the function or process of any bodily member or organ.

29 (b) The term includes serious mental illness or impairment.

30 (65) "Sexual contact" means any touching of the sexual or other intimate parts of the person of

another for the purpose of arousing or gratifying the sexual desire of either party.

(66) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(67) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(68) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(69) "Statute" means any act of the legislature of this state.

(70) "Stolen property" means property over which control has been obtained by theft.

(71) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

(72) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(73) "Telephone" means any type of telephone, including but not limited to a corded, uncorded, cellular, or satellite telephone.

~~(73)~~(74) "Threat" means a menace, however communicated, to:

- (a) inflict physical harm on the person threatened or any other person or on property;
- (b) subject any person to physical confinement or restraint;
- (c) commit any criminal offense;
- (d) accuse any person of a criminal offense;
- (e) expose any person to hatred, contempt, or ridicule;
- (f) harm the credit or business repute of any person;
- (g) reveal any information sought to be concealed by the person threatened;
- (h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;
- (i) bring about or continue a strike, boycott, or other similar collective action if the person making

1 the threat demands or receives property that is not for the benefit of groups that the person purports to
2 represent; or

3 (j) testify or provide information or withhold testimony or information with respect to another's
4 legal claim or defense.

5 ~~(74)~~(75) (a) "Value" means the market value of the property at the time and place of the crime
6 or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property
7 within a reasonable time after the crime. If the offender appropriates a portion of the value of the
8 property, the value must be determined as follows:

9 (i) The value of an instrument constituting an evidence of debt, such as a check, draft, or
10 promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of
11 the indebtedness less any portion of the indebtedness that has been satisfied.

12 (ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any
13 valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of
14 the instrument might reasonably suffer by virtue of the loss of the instrument.

15 (iii) The value of electronic impulses, electronically produced data or information, computer
16 software or programs, or any other tangible or intangible item relating to a computer, computer system,
17 or computer network is considered to be the amount of economic loss that the owner of the item might
18 reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss
19 includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition
20 of the item.

21 (b) When it cannot be determined if the value of the property is more or less than \$500 by the
22 standards set forth in subsection ~~(74)(a)~~ (75)(a), its value is considered to be an amount less than \$500.

23 (c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,
24 whether from the same person or several persons, may be aggregated in determining the value of the
25 property.

26 ~~(75)~~(76) "Vehicle" means any device for transportation by land, water, or air or by mobile
27 equipment, with provision for transport of an operator.

28 ~~(76)~~(77) "Weapon" means any instrument, article, or substance that, regardless of its primary
29 function, is readily capable of being used to produce death or serious bodily injury.

30 ~~(77)~~(78) "Witness" means a person whose testimony is desired in any official proceeding, in any

1 investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

2
3 **Section 2. Section 45-6-307, MCA, is amended to read:**

4 **"45-6-307. Aiding the avoidance of telecommunications charges.** (1) A person commits the
5 offense of aiding the avoidance of telecommunications charges when he the person:

6 (a) publishes the number or code of an existing, canceled, revoked, expired, or nonexistent
7 telephone credit card or the numbering or coding ~~which~~ that is employed in the issuance of credit cards
8 with the purpose that it will be used to avoid the payment of lawful telecommunications charges;

9 (b) publishes, advertises, sells, gives, or otherwise transfers to another plans or instructions for
10 the making or assembling of any apparatus, instrument, equipment, or device described in 45-6-306(4)
11 with the purpose that ~~such~~ it will be used or with the knowledge or reason to believe that ~~such~~ it will be
12 used to avoid the payment of lawful telecommunications charges; or

13 (c) manufactures, assembles, possesses, sells, gives, or otherwise transfers any apparatus,
14 instrument, equipment, or device described in 45-6-306(4) with the purpose that it will be used to avoid
15 the payment of lawful telecommunications charges.

16 (2) A person convicted of the offense of aiding the avoidance of telecommunications charges shall
17 be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or
18 both.

19 (3) For the purposes of this section, the term "publish" means to communicate information to any
20 one or more persons, either orally; in person; by computer, telephone, radio, or television; or in a writing
21 of any kind, including but not limited to a letter, memorandum, circular, handbill, newspaper or magazine
22 article, or book."

23
24 **Section 3. Section 45-8-213, MCA, is amended to read:**

25 **"45-8-213. Privacy in communications.** (1) Except as provided in 69-6-104, a person commits
26 the offense of violating privacy in communications if he the person knowingly or purposely:

27 (a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with
28 ~~any~~ a person by telephone and uses ~~any~~ obscene, lewd, or profane language, suggests ~~any~~ a lewd or
29 lascivious act, or threatens to inflict injury or physical harm to the person or property of ~~any~~ the person.
30 ~~the~~ The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious

1 suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend;

2 (b) uses a telephone to attempt to extort money or any other thing of value from ~~any~~ a person
3 or to disturb by repeated telephone calls the peace, quiet, or right of privacy of ~~any~~ a person at the place
4 where the telephone call or calls are received;

5 (c) records or causes to be recorded ~~any~~ a conversation by use of a hidden electronic or
6 mechanical device ~~which that~~ reproduces a human conversation without the knowledge of all parties to
7 the conversation or intercepts a telephonic communication. ~~Subsection (c)~~ This subsection (1)(c) does not
8 apply to ~~any~~ elected or appointed public officials or employees when the transcription, ~~or recording, or~~
9 interception is done in the performance of official duty, to persons speaking at public meetings, or to
10 persons given warning of the transcription, recording, or interception.

11 (d) by means of any machine, instrument, or contrivance or in any other manner:

12 (i) reads or attempts to read ~~any~~ a message or learn the contents ~~thereof~~ of a message while it
13 is being sent over a telegraph line;

14 (ii) learns or attempts to learn the contents of ~~any~~ a message while it is in a telegraph office or
15 is being received ~~thereat~~ at or sent ~~therefrom~~ from a telegraph office; or

16 (iii) uses, attempts to use, or communicates to others any information ~~so~~ obtained as provided in
17 this subsection (1)(d);

18 (e) discloses the contents of a telegraphic message or any part ~~thereof~~ of a telegraphic message
19 addressed to another person without the permission of ~~such~~ the person, unless directed to do so by the
20 lawful order of a court; or

21 (f) opens or reads or causes to be read any sealed letter not addressed to ~~himself~~ the person
22 opening the letter without being authorized to do so by either the writer of the letter or the person to
23 whom it is addressed or, without the like authority, publishes any of the contents of the letter knowing
24 the ~~same~~ letter to have been unlawfully opened.

25 (2) (a) A person convicted of the offense of violating privacy in communications shall be fined
26 not to exceed \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

27 (b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the
28 county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

29 (c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned
30 in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$10,000, or

1 both."

2

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on March 11, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: Rep. Aubyn A. Curtiss (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 215, SB 503, SB 163, SB 326, 3/4/1999
Executive Action: None

Senator Mahlum made closing statements.

{Tape : 4; Side : B; Approx. Time Counter : 102 - 215}

HEARING ON SB 326

Sponsor:

Senator Tester presented SB 326.

{Tape : 4; Side : B; Approx. Time Counter : 215 - 280}

Proponents:

Ron Ostberg, Montana Independent Telecommunicators Systems

{Tape : 4; Side : B; Approx. Time Counter : 280 - 302}

Mike Batista, Dept. of Justice

{Tape : 4; Side : B; Approx. Time Counter : 302 - 325}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 4; Side : B; Approx. Time Counter : 325 - 428}

Closing by Sponsor:

Senator Tester made closing statements.

{Tape : 4; Side : B; Approx. Time Counter : 428 - 437}

Meeting adjourned.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on March 23, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 463, SB 472, SB 476, SB 477, 3/15/1999

{Tape : 3; Side : A; Approx. Time Counter : 262 - 274}

Questions from Committee Members and Responses:

{Tape : 3; Side : A; Approx. Time Counter : 274 - 303}

Closing by Sponsor:

Senator Mahlum made closing statements.

{Tape : 3; Side : A; Approx. Time Counter : 303 - 337}

EXECUTIVE ACTION ON SB 163

Motion: REP. YOUNKIN moved that SB 163 BE CONCURRED IN AS AMENDED.

Motion/Vote: REP. CLARK moved that SB 163-Be Amended; LATER P. CLARK WITHDREW HIS AMENDMENT AND MOVED TO TABLE. Motion carried 12-8 with Ahner, Anderson, R. Clark, Curtiss, Facey, Gallus, Soft, and Younkin voting no.

{Tape : 3; Side : A; Approx. Time Counter : 337 - 550}

{Tape : 3; Side : B; Approx. Time Counter : 0 - 148}

EXECUTIVE ACTION ON SB 273

Motion: REP. AHNER moved that SB 273 BE CONCURRED IN.

Motion: REP. MOLNAR moved that SB 273 BE TABLED.

Motion failed on a voice vote.

Motion/Vote: REP. AHNER moved that SB 273 BE CONCURRED IN.

Motion carried 17-3 with Jore, McGee, and Molnar voting no.

{Tape : 3; Side : B; Approx. Time Counter : 148 - 255}

EXECUTIVE ACTION ON SB 326

Motion/Vote: REP. WYATT moved SB 326-TO RECONSIDER FROM TABLED STATUS. Motion carried 12-8 with Ahner, Curtiss, Jore, McGee, Molnar, Shockley, Soft, and Younkin voting no.

Motion: REP. WYATT moved that SB 326 BE AMENDED.

Substitute Motion: REP. NOENNIG made a substitute motion to amend SB 326, BUT LATER WITHDREW HIS SUBSTITUTE AMENDMENT.

Motion/Vote: REP. WYATT moved that SB 326 BE AMENDED. Motion carried 13-7 with Ahner, Curtiss, Jore, McGee, Molnar, Soft, and Younkin voting no.

Motion/Vote: REP. GALLUS moved that SB 326 BE CONCURRED IN AS AMENDED. Motion carried 11-9 with Ahner, Curtiss, Hurdle, Jore, McGee, Molnar, Shockley, Soft, and Younkin voting no.

**The Law Library's collection does not include
vote sheets**

{Tape : 3; Side : B; Approx. Time Counter : 255 - 550}

{Tape : 4; Side : A; Approx. Time Counter : 0 - 180}

Chairman R. Clark discussed some Housekeeping items such as Coffee fund payments still owing and ideas for field trips the House Judiciary Committee could take prior to the completion of this session.

They were:

Pine Hills

Great Falls Regional Prison and other Great Falls facilities

Butte

Supreme Court

District Courts

ISP

Law Enforcement Academy

Shooting Range

all members are to report at Fridays March 26, 1999 meeting what they would like to do.

Meeting adjourned.



AN ACT PROVIDING THAT, WITH CERTAIN EXCEPTIONS, IT IS A CRIMINAL OFFENSE TO INTERCEPT A COMMUNICATION OVER ANY TYPE OF TELEPHONE, INCLUDING BUT NOT LIMITED TO A CORDED, UNCORDED, CELLULAR, OR SATELLITE PHONE; DEFINING "TELEPHONE" FOR PURPOSES OF THE CRIMINAL CODE; PROVIDING THAT IT IS A CRIME TO PUBLISH CERTAIN INFORMATION BY COMPUTER TO AID IN THE AVOIDANCE OF PAYMENT OF A FEE FOR TELECOMMUNICATIONS SERVICES; AND AMENDING SECTIONS 45-2-101, 45-6-307, AND 45-8-213, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested. Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(19) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(22) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(23) "Forcible felony" means any felony that involves the use or threat of physical force or violence against any individual.

(24) A "frisk" is a search by an external patting of a person's clothing.

(25) "Government" includes any branch, subdivision, or agency of the government of the state

or any locality within it.

(26) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare the affected person is interested.

(27) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(28) "Human being" means a person who has been born and is alive.

(29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(30) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(31) "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume. Intoxicating substance does not include dealcoholized wine or any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(32) An "involuntary act" means any act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(33) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(34) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute

defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(35) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(36) "Medicaid agency" has the meaning in 53-6-155.

(37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(38) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes any related documents submitted as a part of or in support of the claim.

(39) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

(40) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(41) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or for which the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(42) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable

person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(43) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(44) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(45) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(46) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(47) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(48) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(49) "Official proceeding" means a proceeding heard or that may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(50) "Other state" means any state or territory of the United States, the District of Columbia, and

the Commonwealth of Puerto Rico.

(51) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(52) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(53) "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(54) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(55) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision of government.

(56) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(57) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(58) "Premises" includes any type of structure or building and any real property.

(59) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

- (a) real estate;
- (b) money;
- (c) commercial instruments;
- (d) admission or transportation tickets;
- (e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;
- (f) things growing on, affixed to, or found on land and things that are part of or affixed to any

building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and any whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(60) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(61) "Public place" means any place to which the public or any substantial group has access.

(62) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(63) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(64) (a) "Serious bodily injury" means bodily injury that:

- (i) creates a substantial risk of death;
- (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ; or
- (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ.

(b) The term includes serious mental illness or impairment.

(65) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(66) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(67) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(68) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(69) "Statute" means any act of the legislature of this state.

(70) "Stolen property" means property over which control has been obtained by theft.

(71) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

(72) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(73) "Telephone" means any type of telephone, including but not limited to a corded, uncorded, cellular, or satellite telephone.

~~(73)~~(74) "Threat" means a menace, however communicated, to:

- (a) inflict physical harm on the person threatened or any other person or on property;
- (b) subject any person to physical confinement or restraint;

- (c) commit any criminal offense;
- (d) accuse any person of a criminal offense;
- (e) expose any person to hatred, contempt, or ridicule;
- (f) harm the credit or business repute of any person;
- (g) reveal any information sought to be concealed by the person threatened;
- (h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;
- (i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or
- (j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

~~(74)~~(75) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than \$500 by the

standards set forth in subsection ~~(74)(a)~~ (75)(a), its value is considered to be an amount less than \$500.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

~~(75)(76)~~ "Vehicle" means any device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

~~(76)(77)~~ "Weapon" means any instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

~~(77)(78)~~ "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 2. Section 45-6-307, MCA, is amended to read:

"45-6-307. Aiding the avoidance of telecommunications charges. (1) A person commits the offense of aiding the avoidance of telecommunications charges when ~~he~~ the person:

(a) publishes the number or code of an existing, canceled, revoked, expired, or nonexistent telephone credit card or the numbering or coding ~~which that~~ is employed in the issuance of credit cards with the purpose that it will be used to avoid the payment of lawful telecommunications charges;

(b) publishes, advertises, sells, gives, or otherwise transfers to another plans or instructions for the making or assembling of any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that ~~such it~~ will be used or with the knowledge or reason to believe that ~~such it~~ will be used to avoid the payment of lawful telecommunications charges; or

(c) manufactures, assembles, possesses, sells, gives, or otherwise transfers any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that it will be used to avoid the payment of lawful telecommunications charges.

(2) A person convicted of the offense of aiding the avoidance of telecommunications charges shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) For the purposes of this section, the term "publish" means to communicate information to any one or more persons, either orally; in person; by computer, telephone, radio, or television; or in a writing

of any kind, including but not limited to a letter, memorandum, circular, handbill, newspaper or magazine article, or book."

Section 3. Section 45-8-213, MCA, is amended to read:

"45-8-213. **Privacy in communications.** (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if he the person knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with any a person by telephone and uses any obscene, lewd, or profane language, suggests any a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of any the person; the The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend;

(b) uses a telephone to attempt to extort money or any other thing of value from any a person or to disturb by repeated telephone calls the peace, quiet, or right of privacy of any a person at the place where the telephone call or calls are received;

(c) records or causes to be recorded any a conversation by use of a hidden electronic or mechanical device which that reproduces a human conversation without the knowledge of all parties to the conversation. ~~Subsection (c)~~ This subsection (1)(c) does not apply to ~~duly~~ elected or appointed public officials or employees when the transcription or recording is done in the performance of official duty, to persons speaking at public meetings, or to persons given warning of the transcription or recording.

(d) by means of any machine, instrument, or contrivance or in any other manner:

(i) reads or attempts to read any a message or learn the contents ~~thereof~~ of a message while it is being sent over a telegraph line;

(ii) learns or attempts to learn the contents of any a message while it is in a telegraph office or is being received ~~thereat at~~ or sent ~~therefrom~~ from a telegraph office; or

(iii) uses, attempts to use, or communicates to others any information ~~so~~ obtained as provided in this subsection (1)(d);

(e) discloses the contents of a telegraphic message or any part ~~thereof~~ of a telegraphic message addressed to another person without the permission of ~~such the~~ the person, unless directed to do so by the lawful order of a court; or

(f) opens or reads or causes to be read any sealed letter not addressed to ~~himself~~ the person opening the letter without being authorized to do so by either the writer of the letter or the person to whom it is addressed or, without the like authority, publishes any of the contents of the letter knowing the ~~same letter~~ to have been unlawfully opened.

(2) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts a telephonic voice or data communication. This subsection (2) does not apply to elected or appointed public officials or employees when the interception is done in the performance of official duty or to persons given warning of the interception.

~~(2)~~(3) (a) A person convicted of the offense of violating privacy in communications shall be fined not to exceed \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$10,000, or both."

- END -